BAIL SLIP

The Appellant/Accused was directed to be released on bail in and by the order of this Court dated 20.09.2001 made in Crl MP No. 6240 of 2001 in Crl Appeal No. 828 of 2001 on the file of the High Court, Madras

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.828 of 2001

Saravanan .. Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Uthangarai Police Station,
Crime NO.641 of 1997,
Dharmapuri District. .. Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 14.8.2001 made in S.C.No.125 of 1999 on the file of the learned Principal Sessions Judge, Dharmapuri.

For Appellant :Mr.S.Selvathirumurugan
for Mrs.Jeya Baharathi

For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.125 of 1999 on the file of the learned Principal Sessions Judge, Krishnagiri at Dharmapuri.

2.The short facts of the prosecution case is that on 20.11.1997 at about 5.00 pm while the deceased-Athimulam was proceeding from Keelkuppam to Chinnavellaiyan Gounder land the accused has assaulted the deceased with a stone on his head

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thereby causing instantaneous death to the victim.

3.The case was taken on file by the learned Judicial Magistrate, Uthangarai under PRC.No.16 of 1998. On appearance of the accused on summons, the learned Judicial Magistrate had furnished copies to the accused under Section 207 of Cr.P.C., and since the case is triable by a Court of Sessions, the learned Judicial Magistrate had committed the case under Section 209 of Cr.P.C., to the Court of Sessions.

4.The learned Sessions Judge, on appearance of the accused had framed a charge under Section 302 IPC against the accused and when questioned the accused pleaded not guilty. Before the learned Sesssion Judge P.W.1 to P.W.10 were examined, Ex.P.1 to Ex.P.15 were exhibited and M.O.1 to M.O.11 were marked.

5.P.W.1 to P.W.3, according to the prosecution are ocular witnesses have not supported the case of the prosecution. Hence, they were treated as hostile witnesses.

6.P.W.4 is the wife of the deceased. According to her, at the time of occurrence she had also accompanied her husband and there was a quarrel between her husband/deceased and the accused at 10.00 am on the previous day and that the accused had left the house by criminally intimidating the deceased that he will not leave him without murdering him and that at about 10.00 am on the date of occurrence, her husband/deceased went to the post office to attend to his work. According to P.W.4, her husband was working as a post master in the village and that at about 4.30 pm her husband was returning to the house after alighting from the bus and she also accompanied him and while they were proceeding along the Marriyamman temple land the accused came there and asked her husband/deceased to give 'parambu jalladai' and while demanding the said 'parambu jalladai' the accused had assaulted her husband/deceased with a small stone on his head and due to the impact her husband/deceased fell down and Immediately the accused took a big stone and crushed the head of her husband/deceased, which resulted in his instantaneous death and that on hearing his hue and cry P.W.1, P.W.2, P.W.3 and witnesses Mariyappan and Lakshmi rushed to the place of occurrence. She has identified M.O.1 as the small stone used by the accused at the time of the occurrence for committing the crime and M.O.2 is the big stone used by the accused at the time of commission of the offence and M.O.3 is the wrist watch of her deceased husband.

7.P.W.6 is the VAO, who had preferred Ex.P.4-complaint on the basis of the statement given by P.W.1-Kaliyappan. According to him, Ex.P.3 is the statement of Kaliyappan (P.W.1). The complaint Ex.P.3 was preferred by Kaliyappan on 20.1.1997 at about 9.00 pm. He had immediately rushed to the police station at about 10.00 pm

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on the same day and handed over Ex.P.3-statement along with his report-Ex.P.4.

8.P.W.10 is the then Inspector of Police, Uthangarai Police Station. According to him, his predecessor Narayanasamy had registered the case on the basis of the complaint Ex.P.3 under Uthangarai police station Cr.No.641/1997 under Section 302 IPC. Ex.P.12 is the express FIR. After sending the express FIR to the concerned officials including the Judicial Magistrate through police constable No.291, Narayanasamy-Investigating officer, had proceeded to the place of occurrence about 11.30 pm and prepared a mahazar Ex.P.5 in the presence of P.W.6 and another witness. He had drawn Ex.p.13-rough sketch in the presence of P.W.6 and another witness. He had seized M.O.1-blood stained small stone, M.O.2-blood stained big stone, M.O.4-blood stained sand and M.O.5-sample sand from the place of occurrence under Ex.P.6-recovery mahazar in the presence of P.W.6 and another witness. He had conducted inquest on the corpse of the deceased Athimulam in the presence of the panchayatdars. Ex.P.14 is the inquest report. Thereafter, he had sent the corpse of Athimulam for postmortem through P.W.8, who had identified the corpse to the Doctor-P.W.5, who had conducted postmortem on the corpse of the deceased Athimulam.

9.According to P.W.5, he had noticed the following injuries on the corpse:-

i) an incised injury measuring 2 x 1 x 1 cm below his right eye brow,
ii) an abrasion measuring 6 x 8 cms on the right cheek.
iii) an abrasion measuring 4 x 4 cm on the right forehead.
iv) a contusion measuring 1 x 1 cm on the right side of the fore head

v) an abrasion measuring 6 x 4 cm on the backside of the left ear, near the left eye.
vi) blood was oozing out from the left ear
vii) fracture on the skull through which brain matters were oozing out

viii) an incised wound measuring 4 x 1 cm behind the right pinna.

On exploring injury No.7, he could see several fractures on the skull and the brain membrane was found torn to an extent of 8 x 3 cm and the left side of the brain blood clots were seen and the brain was found damaged on the left side to an extent of 4 x 2 cm. The doctor has opined that at about 18 to 24 hours prior to the autopsy the deceased would have died due to the fracture he had

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sustained in the skull bone and also due to hemorrhage. Ex.P.2 is the postmortem certificate. The Doctor has further opined that the injury Nos.1 to 5 would have been caused with a stone like M.O.1 and injury Nos.6 to 8 would have been caused with a stone like M.O.2 and that the injuries are sufficient to cause the instantaneous death of the victim.

10.After the postmortem P.W.8, postmortem constable, had recovered M.O.3-wrist watch, M.O.7-slack shirt, M.O.8-banian, M.O.9-dothi, M.O.10-underwear, and M.O.11-waist rope from the corpse under form-95 and handed over the same to the Investigating Officer.

11.P.W.9 would depose that P.W.4's husband was working in posttal department and that on 20.11.1997 at about 4.00 pm he saw the deceased Athimulam, the accused and P.W.4 at Keelkuppam village near a stream and that there was a quarrel between the deceased Athimulam and the accused and that when he was about to go nearer, the accused had assaulted the deceased with a small stone on the temple region and also assaulted him with a big stone on the head causing instantaneous death to Athimulam.

12.P.W.7 is the then Head Clerk of the Judicial Magistrate Court, Uthangarai. According to him, as per the letter of requisition of the Investigating Officer, the material objects connected with this case were sent to the Forensic Science Laboratory for chemical analysis along with Ex.P.9, letter of the Judicial Magistrate and that Ex.p.10 is the analyst's report and Ex.P.11 is the Serologist's report. According to P.W.10, his predecessor Narayanasamy, the Investigating Officer, had arrested the accused on 22.11.1997 at about 2.00 pm near Anuman Theertham and recorded the voluntary confession statement of the accused in the presence of one Ponnurangam and had seized M.O.6-shirt of the accused under Ex.P.7-mahazar. After completing the formalities, he had filed the charge sheet against the accused on 6.3.1998 under Section 302 IPC.

13.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime. After going through the evidence both oral and documentary the learned trial Judge has come to the conclusion that the offence under Section 304(ii) IPC has been made out against the accused and accordingly convicted and sentenced the accused to undergo 3 years RI, which necessitated the accused to prefer this appeal.

14.Now the point for determination in this appeal is whether the offence under Section 304(ii) IPC has been made out against the accused to warrant conviction; or the findings of the learned trial judge in S.C.No.125 of 1999 on the file of the learned Principal Sessions Judge, Dharmapuri, is liable to be set aside

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for the reasons stated in the memorandum of appeal?

15.The Point:- 15(a)The entire case of the prosecution hinges upon the evidence of P.W.4 and P.W.9. All the ocular witnesses relied on by the prosecution viz. P.W.1 to P.W.3 have turned hostile. Even though P.W.4, the wife of the victim, would claim that she have accompanied the victim while he was returning from his office after alighting from a bus, her statement before the Investigating Officer, which was recorded under Section 161(3) of Cr.P.C., is otherwise. Before the Investigating Officer P.W.4 had stated that she had not accompanied the deceased at the time of occurrence at the place of occurrence. According to her statement before the Investigating Officer, she came to know that at the time of occurrence the accused had criminally intimidated the deceased and that P.W.1 to P.W.3 have witnessed the occurrence along with other witnesses. While deposing before the Court, P.W.4 has stated that the occurrence took place in her presence and that only after hearing her distress call P.W.1 to P.W.3 and other witness Mariyappan and Lakshmi came to the place of occurrence. Under such circumstances, we cannot give any credit to the evidence of P.W.4.

15(b)P.W.9 is one Dhandapani. According to P.W.4, P.W.9 had not responded to the distress call she made soon after the occurrence. Even in her statement before the Investigating Officer, she has not stated that Dhandapani was present at the time of occurrence. In the cross-examination P.W.9 would admit that he was brought to the Court only by P.W.4 for the purpose of giving evidence. Further no statement under Section 161(3) of Cr.P.C., was recorded from P.W.9 as admitted by P.W.10, the successor of the Investigating Officer Narayanasamy. Under such circumstances, the evidence of P.W.9 was also of any use to the case of the Prosecution.

15(c)The learned counsel appearing for the appellant relying on AIR 2005 SC 1284 (Birendra Rai and others Vs. State of Bihar), would contend that without examining the Investigating Officer the seizure of the material objects cannot be taken to be proved. The learned Additional Public Prosecutor relying on M.O.6-blood stained shirt recovered from the accused, would contend that according to the serologist's report the blood stain seen in M.O.6 belongs to the blood group of the deceased and this will go to show that the accused alone was present at the place of occurrence at the time of occurrence and have committed the crime. Except the reasoning given in the Judgment of the trial Court of the non-examination of the Investigating Officer Narayanasamy there is absolutely no evidence on record to show a valid reasoning for the non-examination of the Investigating Officer Narayanasamy. Even P.W.10, the successor of Narayanasamy, has not given any reasoning in his evidence for the non-examination of the Investigating Officer Narayanasamy. The observation in AIR 2005 SC 1284 (Birendra Rai and others Vs. State of Bihar), is to the

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effect that

> "a mere fact that according to the seizure list a stick with blood stains and pellet marks was seized from the place of occurrence, would not advance this argument any further. The seizures have not been proved in this case because the investigating officer was not examined, and the seizure witness has turned hostile."

Even though in the case on hand the seizure witness P.W.6 has not turned hostile, he (P.W.6) in his evidence has not even deposed to the fact that M.O.6 was blood stained at the time of recovery by the Investigating Officer Narayanasamy. So practically there is no evidence against the accused to warrant conviction under Section 304(ii) IPC. Point is answered accordingly.

16.In fine, the appeal is allowed and the conviction and sentence against the accused under Section 304(ii) IPC made in S.C.No.125 of 1999 on the file of the learned Principal Sessions Judge, Dharmapuri, is set aside and the accused is acquitted from the charges levelled against him. Bail band shall stand cancelled.

Ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Principal Sessions Judge,
Dharmapuri.

2.The Judicial Magistrate,
Uthangarai.

3.-do-The Chief Judicial Magistrate,
Dharmapuri.

4.The Public Prosecutor, High Court, Madras.

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5.The Inspector of Police,
Uthangarai Police Station,
Dharmapuri,
(Cr.NO.641 of 1997)

6. The District Collector, Dharmapuri

7. The Directed General of Police, Chennai

+ one cc to Mr. N. Jayabharathi,Advocate sr no. 45966

akr(co)
nm(07.08.07)

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